

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

BANCO POPULAR DE PUERTO RICO,

Plaintiff,

v.

YARIEL PIÑERO CASTRO, et al.,

Defendants.

CIVIL NO. 06-1104 (GAG-BJM)

REPORT AND RECOMMENDATION
RE: DEFAULT HEARING FOR COLLECTION OF MONIES

This matter was referred to the undersigned for a default damages hearing and report and recommendation as to plaintiff Banco Popular de Puerto Rico's ("BPPR") motion for default judgment. (See Docket No. 13, 14, 15).

Plaintiff BPPR brought this foreclosure action against defendants on January 25, 2006. The Complaint alleges that on August 30, 2002, before notary public Lesbia Hernandez Miranda, defendants executed and delivered to Preferred Mortgage Corporation a \$104,037.00 note ("Note"), bearing an interest rate of 7.5% per annum to be paid in consecutive monthly installments of \$727.44 beginning on October 20, 2002. (See Complaint, Docket No. 1). The Complaint further alleges that the Mortgage note was guaranteed with a first mortgage lien in accordance with Deed of Mortgage #296 in the following property described in Spanish as follows:

"Urbana: Solar número Cuarenta y Uno (41) de la manzana "L", Urbanización Villa Contesa, Barrio Pájars y Cerro Gordo de Bayamón, compuesto de TRESCIENTOS CINCUENTA Y SIETE PUNTO SETENTA Y CINCO METROS (357.75 m.c.) En lindes por el NORTE, con el solar Número cuarenta (40), en veintiséis punto cincuenta metros (26.50m.); por el SUR, con el solar número cuarenta y dos (42), en veintiséis punto cincuenta metros (26.50m); por el ESTE con la Calle Número Noventa (90), en trece punto cincuenta metros (13.50m.); por el OESTE, con el Solar Número Treinta y Nueve (39), en trece punto cincuenta metros (13.50m.).

Contiene una casa de concreto reforzado para una familia.

Inscrita al folio setenta y uno vuelto (71 vto.) del tomo cuatrocientos treinta y dos (432)e Bayamón, finca número diez y nueve mil quinientos sesenta y cuatro (19,564), inscripción primera (1ra.)."

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The Complaint also alleges that BPPR is the holder in due course of the aforementioned Mortgage Note, and that as of December 1, 2005, the defendants owed the sum of \$2,707.82 in accrued installments that had not been paid by the defendants or any other party. Pursuant to the terms of the Note and the Mortgage, the Complaint demands judgment for the sum of \$100,341.94 in principal, plus interest at 7.5% per annum from November 22, 2005 until full payment is made, plus \$10,404.00 for costs, disbursements and attorneys fees, plus any other advances made by plaintiff. Id. The Complaint further seeks foreclosure of the property described above in the event that the defendants default on the payment of any money judgment entered. Id.

Summons were returned executed as to defendants Yariel Piñero-Castro and Brenda L. Jiménez Vargas, and their conjugal partnership, on March 10, 2006. After the defendants failed to answer the complaint within the required time period, BPPR requested defendants' default, which the Clerk entered on April 3, 2006. (See Docket No. 4, 5).

On January 16, 2007, BPPR filed a motion for default judgment. (Docket No. 13). In compliance with Local Rule 55(c), BPPR's motion was supported by: 1) a sworn statement by Jose David Hernández Dávila, BPPR's Assistant Vice-President of the Foreclosure Section, verifying the principal, interest and other amounts due on the note,¹ attesting that plaintiff's efforts to collect on the debt have been unsuccessful, and attesting to the defendants' competency and non-entitlement to protection under the Service Members Relief Act of 2003; 2) Military Status Reports attesting that the defendants are not currently on active duty with the Department of Defense; 3) a certification from the Puerto Rico Registry of Property; and 4)

¹The sworn statement attested that the amount owed was the sum of \$100,341.94 of principal, plus interest at 7.5% per annum from November 22, 2005 at the daily accrual rate of \$20.905708, plus \$10,404.00 for costs, disbursements and attorneys fees, plus other unspecified amounts for other disbursements or advances made by BPPR.

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copies of the Note and mortgage deed.

A default hearing was held on March 6, 2007. BPPR appeared represented by Attorney Juan H. Soto Sola. Defendants did not appear. During the hearing, plaintiff submitted updated military status reports, which were admitted as Exhibits A and B to the hearing. Plaintiff otherwise rested on the documentation submitted in its motion for default judgment. BPPR at this time does not request foreclosure on the mortgaged property but reserves its right to do so if it is unable to collect on any money judgment.

Given the foregoing, I recommend that the court enter judgment in favor of BPPR and against defendants Piñero Castro and Jiménez Vargas, and their conjugal partnership, for **the sum of \$100,341.94 of principal, plus interest at 7.5% per annum from November 22, 2005 at the daily accrual rate of \$20.905708 until the date of entry of judgment, plus \$10,404.00 for costs.**

The parties have ten (10) days to file any objections to this report and recommendation. Failure to file same within the specified time waives the right to appeal this order. Henley Drilling Co. v. McGee, 36 F.3d 143, 150-151 (1st Cir. 1994); United States v. Valencia, 792 F.2d 4 (1st Cir. 1986). See Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 991 (1st Cir. 1988) (“Systemic efficiencies would be frustrated and the magistrate’s role reduced to that a mere dress rehearsal if a party were allowed to feint and weave at the initial hearing, and save its knockout punch for the second round.”).

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 7th day of March, 2007.

S/Bruce J. McGiverin
BRUCE J. McGIVERIN
United States Magistrate Judge